IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 4405 of 2006
Date of Decision: 15 .09.2006

Satpal Singh ...Petitioner

Vs.

Hardev Singh & Ors. ...Respondents

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr.Kanwaljit Singh, Advocate,
for the petitioner.

Mr.Vikas Bahl, Advocate,
for respondents No.1 & 2/Caveators.

Vinod K.Sharma, J.

The petitioner by way of present revision petition has challenged the order dated 14.6.2005 passed by the learned Civil Judge (Senior Division), Nawanshahr as well as the order dated 22.10.2005 passed by the learned Additional District Judge, Nawanshahr declining the application moved by the petitioner under Order 39 Rules 1 and 2 of the Code of Civil Procedure (for short the Code).

The petitioner had filed a suit for possession by way of specific

performance of the agreement to sell dated 25.5.2004 regarding the property in dispute or in the alternative for the recovery of Rs.20,00,000/-.

Along with the suit, the plaintiff-petitioner filed an application under Order 39 Rules 1 and 2 read with section 151 of the Code seeking ad-interim injunction on the ground that defendants No.1 and 2 in the suit had entered into an agreement dated 25.5.2004 to sell the property in dispute and it was agreed that the sale was to be executed on 18.5.2005. The case of the petitioner-plaintiff was that he always ready and willing to perform his part of the contract and he was still ready and willing to do so. It was further pleaded that on 18.5.2005 he remained present in the office of the Sub-Registrar, Nawanshahr for the purpose of getting the sale deed executed but defendants No.1 and 2 did not turn up, whereas defendants No.3 and 4 in the suit claimed to have purchased the property on 20.5.2005. It was further claimed that on the basis of the sale deed the defendants were threatening to alienate the property and change the nature of the property and create incumbrance over the property in dispute for which they have no right.

Reply to the application was filed and it was alleged that the agreement to sell did not create any title and the transaction made would be hit by doctrine of lis pendens. It was claimed that the plaintiff has no prima facie case and the balance of convenience was also not in his favour.

Defendants No.3 and 4 claimed that they were bona fide purchasers for consideration without notice of any agreement to sell in their favour and prayed that the application be dismissed.

The application moved by the petitioner was dismissed by the learned Trial Court by holding that defendants No.3 and 4 have claimed

themselves to be bona fide purchasers and therefore, it was not proper to issue injunction against the use of the property by them. It was also observed that the alienation made by the party would be hit by doctrine of lis pendens and the application was disposed of with a direction that if defendants No.1 and 2 alienate the property they would inform the court and the names of the vendees shall be supplied to the Court so as to bind them if any decree is passed in favour of the plaintiff.

Learned counsel for the petitioner contended that the learned courts below erred in law in not granting injunction as in the present case the defendant-respondents had not given the names of prospective vendees nor have brought their names on the file to make them parties to the suit so as to bind them with the final decision of the suit. It was also contended that the orders passed by the learned courts below suffer from grave illegality as the learned lower courts while rejecting the application under Order 39 Rules 1 and 2 of the Code have allowed the application moved by the respondents under section 151 of the Code for sale of the property. It was claimed by the petitioner that he had a prima facie case in his favour as the agreement was executed between the petitioner and defendants No.1 and 2 which was not disputed. It was also claimed that balance of convenience was in favour of the petitioner and he was to suffer irreparable loss if the injunction against alienation and construction on the property was not granted. It was claimed that the learned lower courts failed to notice that the time was not the essence of the contract in case of immovable property and that the petitioner once had shown his readiness and willingness to execute the sale deed injunction ought to have been granted.

Learned counsel for the petitioner contended that though the

property in dispute stands sold still the courts below were bound to restrain the respondents from changing the nature of the property by raising construction thereon. Learned counsel for the petitioner relied upon the judgment of Hon'ble Supreme Court in the case of **Maharwal Khewaji Trust (Regd), Faridkot Vs. Baldev Dass 2005 (1) Apex Court Judgments 457 (S.C.)** to contend that learned courts below erred in law in not restraining the respondents from raising construction and from changing the nature of the suit land. Para No.9 of the said judgment on which strong reliance was placed reads as under:-

> "9. Be that as it may, Mr.Sachhar is right in contending that unless and until a case of irreparable loss or damage is made out by a party to the suit, the court should not permit the nature of the property being changed which also includes alienation or transfer of the property which may lead to loss or damage being caused to the party who may ultimately succeed and may further lead to multiplicity of proceedings. In the instant case no such case of irreparable loss is made out except contending that the legal proceedings are likely to take a long time, therefore, the respondent should be permitted to put the scheduled property to better use. We do not think in the facts and circumstances of this case, the lower appellate court and the High Court were justified in permitting the respondent to change the nature of property by putting up construction as also by permitting the alienation of the property,whatever may be the condition on which the same is done. In the event of the appellant's claim being found baseless ultimately, it is

always open to the respondent to claim damages, or, in an appropriate case, the court may itself award damages for the loss suffered, if any in this regard. Since the facts of this case do not make out any extraordinary ground for permitting the respondent to put up construction and alienate the same, we think, both the courts below, namely, the lower appellate court and the High Curt erred in making the impugned orders. The said orders are set aside and the order of the trial court is restored."

Learned counsel for the petitioner thereafter placed reliance on the judgment of this Court in **Sunita Jain & Ors. Vs. Chander Kanta & Ors. 1996 (1) Civil Court Cases 276** to contend that there is no absolute right either to grant injunction or to refuse the same on the ground of lis pendens. Para No.5 of the said judgment reads as under:

"5. A consent decree would continue to be valid till it is set aside on permissible grounds by the Court. Rule of lis pendense has been enacted to safeguard the rights of the plaintiffs in case the defendant(s) transfer the suit property during the pendency of the suit. Any transfer made during the pendency of the suit would be subject to the decision of the suit. No doubt, at times, transfer of property during the pendency of the suit gives rise to multiplicity of the suits. There is no absolute rule either to grant the injunction or to refuse the same on the ground of lis pendense. It varies on the facts of each case. In this particular case, I am satisfied that ends of justice would be met if the petitioner and the other

> defendants in whose favour Pawan Kumar had suffered consent decrees, are permitted to sell the property during the pendency of the suit provided they take prior permission from the Court and after making an application to bring on record the proposed vendees before the Court so that the proposed vendees are brought on the record of this suit so as to bind them specifically to the decree which may be passed in the suit. This would not prejudice the rights of either of the parties as the property would be sold after bringing on record the proposed vendees and after taking permission from the Court to sell the property."

The contention of the learned counsel for the petitioner was that in the present case once the petitioner has prima facie proved that there was an agreement to sell and he was willing to perform his part of contract it was a case where injunction should have been granted.

Mr Vikas Bahl, on the other hand, appearing for respondents No.1 and 2 contended that the case of the petitioner is based merely on the agreement to sell which does not confer any title on the willing purchaser and therefore, the willing purchaser was not entitled to injunction restraining the true owner from interfering in his possession.

Learned counsel for the respondents thereafter placed reliance on the judgment of this Court in **Gulab Rai Vs. Atam Singh & Ors. 1998 (2) Civil Court Cases 619** to contend that in the present case as the interest of the petitioner has been fully protected by holding that any alienation of the property during the pendency of the suit would be hit by the doctrine of lis pendens there is no ground to interfere in the order.

I have heard the learned counsel for the parties and find that the learned courts below have taken note of the fact that the respondents had purchased the property and therefore, no restriction on their right could be placed especially when the property has been sold to defendants No.3 and 4 who are already party to the suit and even the subsequent sales have been made with permission of the Court. The order passed is in consonance with the judgment relied upon by the petitioner in the case of **Sunita Jain's case (supra).** Reliance of the learned counsel for the petitioner on the judgment of Hon'ble Supreme Court in **Maharwal Khewaji Trust's case** (supra) to contend that injunction for construction has always to be granted is not born out. Hon'ble Supreme Court on the facts of that said case had come to the conclusion that merely on the basis of the statement of the parties that the construction would be subject to the final decision of the case or that the right of the petitioner would be protected by lis pendens cannot be a ground to deny the injunction. Hon'ble Supreme Court held that each case has to be decided on the facts of each case.

Learned courts below in the present case have not decided the case on the basis of the statement made by the learned counsel for the respondents but on appreciation of the documents placed on record and have come to the positive conclusion that there was no prima facie case in favour of the petitioner to grant injunction. Thus, there is no force in the present revision petition which is accordingly dismissed.

Before parting with the order it may be mentioned that the apprehension of the petitioner that the finding recorded by the courts below on merit of the controversy is likely to come in his way in final adjudication cannot be sustained. The order under the provisions of Order 39 Rules 1

and 2 of the Code is summary in nature and cannot affect the merits of the case which is to be decided after the parties have led evidence.

However, in the interest of justice it is clarified that any observation made by the courts below on the merits of the case would not affect the final adjudication after the parties have led their evidence.

(Vinod K.Sharma)
September 15,2006 Judge
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